ADORNA PROPERTIES SDN BHD

v.

BOONSOM BOONYANIT

FEDERAL COURT, KUALA LUMPUR
EUSOFF CHIN CJ
WAN ADNAN ISMAIL (CJ MALAYA)
ABU MANSOR ALI FCJ
[CIVIL APPEAL NO: 02-14-97(P)]
13 DECEMBER 2000

EVIDENCE: *Standard of proof - Forgery - Civil case - Proof on a balance of probabilities*

LAND LAW: *Indefeasibility of title and interests - Forged transfer - Whether immediate transferee bona fide purchaser for valuable consideration - Whether immediate transferee may plead proviso to s. 340(3) of National Land Code 1965 - Application of proviso to s. 340(3) - National Land Code 1965, s. 340(1), (2), (3) and proviso to sub-s. (3)*

STATUTORY INTERPRETATION: *Construction of statutes - Proviso - Objectives and functions of provisos to sections in statutes - National Land Code 1965, s. 340(3)*

The plaintiff claimed that she was the registered proprietor of two pieces of land ('the land'). She alleged that someone had forged her signature and transferred the land to the defendant. The defendant claimed that it had no knowledge that the transfer documents were forged by someone who was not the true owner, and had no reason to suspect that they were forged.

The High Court dismissed the plaintiff's claim but its appeal to the Court of Appeal was allowed. Hence, this appeal by the defendant to the Federal Court.

The issues for consideration were: (i) whether the standard of proof for forgery was that of a balance of probabilities or beyond a reasonable doubt; and (ii) whether the defendant had acquired an indefeasible title to the land by virtue of the proviso to s. 340(3) of the National Land Code 1965 ('NLC').

Held:
Per Eusoff Chin CJ

[1] The standard of proof for forgery in a civil case is that of a balance of probabilities.

[2] It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. The object of a proviso is to qualify or limit something which

has gone before it. Its proper function is to except and deal with a case which would otherwise fall within the general language of the main provision of the statute, and its effect is confined to that case. In other words, the object of a proviso is to carve out from the substantive section of a statute, a class or category of persons or things to whom or to which the main section does not apply. The proviso cannot be divorced from the main clause to which it is attached. It must be considered together with the section or subsection of the statute to which it stands as a proviso.

[3] By virtue of the proviso to s. 340(3) of the NLC, a purchaser in good faith and for valuable consideration is excluded from the application of the substantive provision of s. 340(3). This category of registered proprietors obtains immediate indefeasible title to the lands. Thus, on the facts of this case, even if the instrument of transfer was forged, the respondent nevertheless obtained an indefeasible title to the land.

[Appeal allowed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Plaintif menuntut bahawa beliau adalah tuanpunya berdaftar dua bidang tanah (tanah tersebut). Beliau mendakwa bahawa seseorang telah memalsukan tandatangan beliau dan memindahkan tanah tersebut kepada defendan. Defendan menuntut bahawa ianya tiada pengetahuan bahawa dokumen-dokumen tersebut telah dipalsukan oleh seseorang yang bukannya merupakan tuanpunya yang sebenarnya dan tiada alasan untuk mensyaki bahawa ianya adalah palsu.

Mahkamah Tinggi telah menolak tuntutan plaintif. Walaubagaimanapun, rayuan plaintif kepada Mahkamah Tinggi telah dibenarkan. Oleh itu menyebabkan rayuan ini yang dilakukan defendan kepada Mahkamah Persekutuan.

Isu-isu untuk dipertimbangkan adalah: (i) samada standard membuktikan pemalsuan adalah atas imbangan kebarangkalian atau diluar keraguan yang wajar; dan (b) samada perayu telah memperolehi hakmilik yang tidak boleh disangkal kepada tanah tersebut menurut proviso kepada s. 340(3) Kanun Tanah Negara 1965.

Diputuskan:
Oleh Eusoff Chin KH

[1] Standard untuk membuktikan pemalsuan dalam sesuatu kes sivil adalah suatu imbangan kebarangkalian.

[2] Ianya merupakan kaedah pentafsiran terpenting bahawa proviso kepada sesuatu seksyen yang tertentu atau peruntukan statut hanya meliputi bidang yang dirangkumi oleh peruntukan utama. Tujuan sesuatu proviso adalah untuk melayakkan atau menghadkan sesuatu benda yang telah melampauinya. Fungsinya yang wajar ialah untuk menerima dan menguruskan sesuatu kes yang mana akan sebaliknya terlingkung di dalam

bahagian umum peruntukan utama statut tersebut dan kesannya adalah terlingkung kepada kes itu. Dalam erti kata lain, tujuan sesuatu proviso ialah untuk merangkakan daripada seksyen yang substantif atau fasal sesuatu statut satu kelas atau kategori orang-orang atau benda-benda kepada siapa atau kepada yang mana seksyen utama tersebut tidak dipakai. Proviso tersebut tidak boleh diasingkan daripada fasal utama kepada yang mana ialah dikaitkan. Ianya mestilah dipertimbangkan bersama-sama dengan seksyen atau seksyen kecil statut tersebut kepada yang mana ianya kekal sebagai satu proviso.

[3] Menurut proviso s. 340(3) Kanun Tanah Negara 1965, seorang pembeli yang berniat baik dan untuk balasan bernilai adalah terkecuali daripada pemakaian proviso substantif s. 340(3). Kategori tuanpunya berdaftar ini memperolehi ketidaksangkalan segera kepada tanah-tanah. Oleh itu, dari fakta kes ini, meskipun suratcara pemindahan telah dipalsukan, responden telah memperolehi ketidaksangkalan segera kepada tanah itu.

[Rayuan dibenarkan.]

Case(s) referred to:
Boonsom Bonyanit v. Adorna Properties Sdn Bhd [1995] 4 CLJ 45 ***(folld)***
Boonsom Bonyanit v. Adorna Properties Sdn Bhd [1997] 3 CLJ 17 ***(not folld)***
Choo Loong v. Lip Kwai Kow [1930] 7 FMSLR 213 ***(refd)***
Doshi v. Yeoh Tiong Lay [1975] 1 MLJ 85 ***(refd)***
Ellis v. Ellis [1962] 1 WLR 227 ***(refd)***
Frazer v. Walker [1967] AC 569 ***(refd)***
Ong Lian v. Tan Eng Jin [1917] 1 FMSLR 327 ***(refd)***
Ong Lock Cho v. Quek Shin & Sons Ltd [1941] MLJ 88 ***(refd)***

Legislation referred to:
National Land Code 1965, ss. 42, 338, 340(1), (2)(a), (b), (c), (3)

Land Transfer Act 1952 [NZ], ss. 62, 182, 183

For the appellant - Ghazi Ishak (Murali Navaratnam & Ong Kheng Leong with him); M/s Ghazi & Lim
For the respondent - Lim Kean Chye (BS Sidhu & Gerald Samuel with him); M/s Lim Kean Siew & Co

[Appeal from Court of Appeal, Civil Appeal No: P-02-268-95]

Reported by Mariette Peters-Goh

JUDGMENT

Eusoff Chin CJ:

For the purpose of this appeal it is sufficient to give only the brief facts of the case. The plaintiff who is the respondent in this appeal, and who is a Thai citizen, claimed that she was the registered proprietor of lands lots 3606 & 3607 Mukim 18, Tanjung Bungah, Penang. She claimed that she was the true

Mrs. Boonsom Boonyanit holder of Thai passport No. D 080757, and that another person holding a Thai passport No. 033852 bearing the name of Mrs. Boonsom Boonyanit had forged her (the plaintiff's) signature, and had sold and transferred her lands to the defendant Adorna Properties Sdn Bhd. which is the appellant in this appeal. Before the sale, the lands had been valued by an independent property valuer. There were negotiations on the purchase price, and on 15 December 1988 a sale & purchase agreement was signed, and the lands were finally transferred to the purchaser/appellant on 24 May 1989. The appellant, Adorna Properties claimed that it had no knowledge that the transfer documents were forged by someone who was not the true owner, and had no reason to suspect that they were forged. Both the vendor and purchaser/appellant were represented by different solicitors in the sale & purchase of the lands. Further, it was not disputed that the sale was an arm's length transaction.

The detailed facts of this case can be found in the High Court judgment which is reported in [1995] 4 CLJ at 45.

The High Court dismissed the plaintiff's claim that she (plaintiff) be restored as the registered owner of the lands.

On appeal the Court of Appeal reversed the order of the High Court. Hence this appeal to the Federal Court. The Court of Appeal judgment is reported in [1997] 3 CLJ 17.

Before us, two questions of law were posed for decision and the first is:

i) For proof of forgery such as the one under appeal, whether the standard of proof is on balance of probabilities, or on beyond reasonable doubt?

The same arguments which the parties had put before both the High Court and the Court of Appeal were again argued before us. The High Court held that forgery must be proved beyond reasonable doubt, while the Court of Appeal held that it should be on a balance of probabilities. For the reasons given by the Court of Appeal – see [1997] 3 CLJ 17, at 31-35, we entirely agree that the standard of proof required to prove 'forgery' in civil cases is one on a balance of probabilities.

The other question put for argument and decision in this appeal is:

(ii) Whether the defendant, a *bona fide* purchaser for valuable consideration without notice, acquired an indefeasible title to the properties (the lands) by virtue of s. 340(3) of the National Land Code 1965?

The Court of Appeal held that the signature on the document of transfer was forged. The High Court judge had stated in his judgment that had he adopted the balance of probability standard of proof, there was sufficient evidence to show that the plaintiff's signature was forged.

Both the High Court and Court of Appeal analysed the authorities as early as the year 1917, ie, *Ong Lian v. Tan Eng Jin* [1917] 1 FM SLR 327, *Choo Loong v. Lip Kwai Kow* [1930] 7 FM SLR 213; *Ong Lock Cho v. Quek Shin & Sons Ltd.* [1941] MLJ 88; *Frazer v. Walker* [1967] AC 569; *Doshi v. Yeoh Tiong Lay* [1975] 1 MLJ 85; all based on earlier legislations ie, s. 42 FMS Land Code and ss. 62, 182, 183 of the New Zealand's Land Transfer Act 1952. Both courts also considered carefully *Doshi v. Yeoh Tiong Lay* [1975] 1 MLJ 85. The High Court held that *Doshi* was correctly decided by the then Federal Court in that the registration conferred an immediate indefeasibility under our version of the Torrens System, whereas the Court of Appeal held otherwise.

The present National Land Code (NLC) was enacted by Parliament in 1965 to be applied to all the States in West Malaysia. In doing so s. 338 of the NLC repealed all earlier land enactments of the States, and those enactments repealed, are enumerated in the Eleventh Schedule to the NLC.

We are aware that any sovereign country may adopt and apply the Torrens system, but in adopting the system, it may modify the system to suit its own needs. Our Parliament did not slavishly follow the wordings of ss. 62, 182 and 183 of Land Transfer Act 1952 of New Zealand, nor the wordings of s. 42 of the FMS Land Code. Therefore, to follow the arguments in earlier decisions not based on s. 340 of the NLC would only lead to utter confusion. We would therefore proceed to interpret s. 340 NLC as it stands, and find what was the real intention of Parliament when enacting it, for, the object of interpretation is to discover the intention of Parliament, and the intention of Parliament must be deduced from the language used.

Section 340 of the NLC states:

> 340. Registration to confer indefeasible title or interest, except in certain circumstances.
>
> (1) The title or interest of any person or body **for the time being registered** as proprietor of any land, or in whose name any lease, charge or easement is **for the time being registered**, shall, subject to the following provisions of this section, be indefeasible.
>
> (2) The title or interest of any **such** person or body shall not be indefeasible:
>
> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
>
> (b) where **registration** was obtained by **forgery**, or by means of an insufficient or void instrument; or
>
> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances **specified in sub-section (2)**:

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is **for the time being vested**:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent:

(a) the exercise in respect of any land or interest of any power or forfeiture or sale conferred by this Act or any written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law.

Subsection (1) of s. 340 NLC is worded in plain language. It says that the "title or interest of any person for the time being registered as proprietor of any land ... shall be indefeasible" subject to the provisions contained in the section.

We must bear in mind that a person may be registered as the sole proprietor or as a co-proprietor of a piece of land, but he is for the purpose of this section, still a registered proprietor. He might have become a registered proprietor of the land because he had bought it, or he got it by way of a gift, or by way of transmission upon the death of his parent or spouse. Therefore, a piece of land may have one proprietor or many co-proprietors. Subsection (1) of s. 340 NLC deals with everyone of them as long as he is currently a registered proprietor of that piece of land. So long as his name is on the land register, his title or interest is indefeasible unless caught by sub-ss. (2) and (3).

Subsection (2) of s. 340 NLC uses the word "such". When the word "such" occurs in a section it must not be ignored, but must be read as referring back to the preceding provision – *Ellis v. Ellis* [1962] 1 WLR 227.

Subsection (2) states that the title of **any such person**, ie, any registered proprietor or co-proprietor for the time being, is defeasible if one of the three circumstances in sub-s. (2)(a), (b) or (c) occurs. We are concerned here with sub-s. (2)(b) where the registration had been obtained by forgery.

Subsection (3) says that where that title is defeasible under any of the three circumstances enumerated under sub-s. (2), the title of the registered proprietor to whom the land was subsequently transferred under the forged document, is liable to be set aside. Similarly, sub-s. 3(b) says any interest under any lease, charge or easement subsequently 'granted thereout' ie, out of the forged document may be set aside.

However, sub-s. (3) of s. 340 NLC does not stop there. It contains a proviso.

It is a cardinal rule of interpretation that a proviso to a particular section or provision of a statute only embraces the field which is covered by the main provision. The object of a proviso is to qualify or limit something which has gone before it. Its proper function is to except and deal with a case which would otherwise fall within the general language of the main provision of the statute, and its effect is confined to that case. In other words, the object of a proviso is to carve out from the substantive section or clause of a statute, a class or category of persons or things to whom or to which the main section does not apply. The proviso cannot be divorced from the main clause to which it is attached. It must be considered together with the section or subsection of the statute to which it stands as a proviso.

The proviso to sub-s. (3) of s. 340 of the NLC dealt with only one class or category of registered proprietors for the time being. It excludes from the main provision of sub-s. (3) this category of registered proprietors so that these proprietors are not caught by the main provision of this sub-section. Who are these proprietors? The proviso says that any purchaser in good faith and for valuable consideration or any person or body claiming through or under him are excluded from the application of the substantive provision of sub-s. (3). For this category of registered proprietors they obtained immediate indefeasibility notwithstanding that they acquired their titles under a forged document.

We, therefore, agree with the High Court judge that, on the facts of this case, even if the instrument of transfer was forged, the respondent nevertheless obtained an indefeasible title to the said lands.

We allow this appeal with costs here and the courts below to be taxed and paid by the respondent to the appellant.